CHONG SIN SEN

v.

JANAKI CHELLAMUTHU

HIGH COURT MALAYA JOHOR BHARU
MOHD. GHAZALI J
[CIVIL APPEAL NO: 12-59 OF 1996]
11 MARCH 1997

CIVIL LAW ACT: *Dependency claim - Locus standi - Whether widow under customary marriage a 'wife' within s. 7 of Act - Whether must be married in accordance with Law Reform (Marriage and Divorce) Act 1976 - Law Reform (Marriage and Divorce) Act 1976*

CIVIL PROCEDURE: *Locus standi - Claim by wife under Civil Law Act - Whether woman married under customary rites a 'wife' within meaning of word in Act - Whether has locus standi to bring dependency claim - Civil Law Act 1956 s. 7*

STATUTORY INTERPRETATION: *Extraneous sources - Use of dictionaries - Other statutes in pari materia or relating to same subject matter*

WORDS & PHRASES: *'Wife' - Meaning of 'wife' in s. 7 of Civil Law Act 1956 - Whether includes woman who undergoes customary marriage after coming into force of Law Reform (Marriage and Divorce) Act 1976 - Whether Court can look at extraneous sources to ascertain meaning - Civil Law Act 1956 s. 7 - Law Reform (Marriage and Divorce) Act 1976*

The respondent ('Janaki'), the widow of a road accident victim ('the deceased'), brought an action in the Sessions Court against the appellant ('Chong') under ss. 7 and 8 of the Civil Law Act 1956 ('the CLA') on behalf of the deceased's estate. The action was filed in September 1994. The parties agreed in September 1995 on 50:50 liability and the matter was adjourned for assessment of damages. On 14 May 1996, Chong applied to strike out the claim under O. 14 r. 21(1) of the Subordinate Courts Rules 1980 on the ground, *inter alia*, that Janaki had no *locus standi* to bring the action as her 1991 marriage to the deceased was void since they had only undergone a customary marriage which had not been solemnised in accordance with the provisions of the Law Reform (Marriage and Divorce) Act 1976 ('the 1976 Act'). It was argued that as such, Janaki was not the deceased's 'wife' and could not bring an action under s. 7(2). In reply, Janaki's Counsel pointed out that 'wife' was not defined in the CLA and referred to the Married Women Act 1957, which provides that a married woman 'includes any woman married in accordance

with the rites and ceremonies required by her religion, manners or customs' and thus Janaki had *locus standi*. The Sessions Court Judge dismissed the application on the ground that it was premature to consider the matter at that stage of the proceedings and that it was better dealt with at the trial. Chong appealed. The issues in this appeal were: (i) whether there was delay in making the application to strike out; and (ii) whether the respondent had *locus standi* to bring the action.

Held:

[1] The Sessions Court Judge erred in his reasons for dismissing the appeal as there was to be no trial, seeing as to how the parties had agreed on the issue of liability and the damages were to be assessed. However, as it would only delay the proceedings to send the matter back to the Sessions Court, the Court proceeded to hear the appeal under ss. 29 and 69(4) of the Courts of Judicature Act 1964.

[2] As it was not clear when Chong's solicitors were informed of the fact that Janaki's marriage was a customary one, they should be given the benefit of the doubt and the delay should not vitiate the application to strike out.

[3] On the face of it, it would seem that the marriage was void as far as the 1976 Act was concerned. However, the question to be asked was whether Janaki was a 'wife' within the contemplation of s. 7(2) of the CLA. Since the Legislature has not seen fit to define 'wife' in the CLA and in the absence of anything to the contrary, the word should be read in its natural sense. Furthermore, as there was nothing in the CLA to provide that 'wife' in s. 7(2) is confined to a woman who is married in accordance with any Act, it was open to the Court to interpret the word as best it may. In doing so, the Court could seek assistance from dictionaries and other statutes which are *in pari materia* or which related to the same subject matter.

[4] Section 34 of the 1976 Act, read with ss. 5, 24(1) and 25, denotes that a customary marriage is valid if it is solemnised by a priest of any temple who is appointed a Registrar, but the non-registration of the marriage would not necessarily invalidate it. In this case, Janaki had not shown any evidence that her marriage to the deceased had been registered. However, it was unclear whether the marriage had been solemnised by a duly appointed priest, in which case the non-registration would not invalidate it.

[5] As the 1976 Act was an Act relating to, *inter alia*, monogamous marriages, it is a statute which deals with a different subject matter to

the issue here and ought not to have any influence upon the question whether Janaki falls within the word 'wife' in s. 7(2) of the CLA. The word 'wife' in s. 7(2) of the CLA should not be restricted to a woman married in accordance with the provisions of any Act relating to marriage and divorce. Thus, Janaki, having undergone a customary marriage with the deceased, had the *locus standi* to bring the action.

[Appeal dismissed.]

Cases referred to
K v. JMP Co. Ltd. [1975] 1 All ER 1030 ***(not foll)***
Tucker v. Collinson 34 WR 354 ***(foll)***
Camden (Marquis) v. IRC [1914] 1 KB 641 ***(foll)***
R v. Peters [1886] 16 QBD 636 ***(refd)***
Salomon v. A Salomon & Co. Ltd. [1987] AC 22 ***(refd)***

Legislation referred to
Civil Law Act 1956, ss. 7(2), 8
Courts of Judicature Act 1964, ss. 29, 69(4)
Law Reform (Marriage and Divorce) Act 1976, ss. 5(3), (4), 9, 22(4), 24(1), 25, 34
Married Women Act 1957, ss. 2(1)
Rules of the High Court 1980, O. 18 r. 19(1)
Subordinate Courts Rules 1980, O. 14 r. 21(1)
Fatal Accidents Act [UK] 1959, s. 1(1), (2), (c)

Other sources referred to:
Mallal's Supreme Court Practice Vol. 1, 2nd Edn., p. 226
Jowitt's Dictionary of English Law, Vol. 2, 2nd Edn.
Concise Oxford Dictionary
Craies on Statute Law, 5th Edn.

For the appellant - Neoh Lay Chooi; M/s. Tay & Partners
For the respondent - Baidah bte Mohamed Noor; M/s. Zaman & Assoc.

JUDGMENT

Mohd. Ghazali J:

The respondent is the widow of one Muniappa Pillai a/l Maritha Muthooo, deceased (hereafter referred to as 'the deceased') and has, in June 1994, filed an action in the Sessions Court at Johor Bahru against the appellant pursuant to ss. 7 and 8 of the Civil Law Act 1956 on behalf of his estate. The deceased apparently was killed in a road-accident which occurred on 28 June 1993 and the respondent is claiming that the appellant was solely or partly negligent for the tort. The appellant filed his defence in September 1994.

On 14 May 1996, the appellant filed an application praying that the summons and statement of claim filed by the respondent be struck out pursuant to O. 14 r. 21(1) of the Subordinate Courts Rules 1980 on the following grounds, namely:

(a) the respondent has no *locus standi* to bring the action as a dependent of the deceased;

(b) it discloses no reasonable cause of action; or

(c) it is otherwise an abuse of the process of the Court.

In her affidavit in support of the application, Miss Neo, Lay Choo, Counsel for the appellant, stated that the respondent cannot claim to be the wife of the deceased as her marriage was void. She contended that it had been contracted in contravention of the provisions of the Law Reform (Marriage and Divorce) Act 1976 (hereafter referred to as 'the 1976 Act') and as such the respondent has no *locus standi* to bring the action. She explained therein that since the respondent has brought the action on the basis that she was the wife of the deceased, solicitors for the appellant had requested her solicitors to furnish a copy of her marriage certificate but they failed to respond. Subsequently they were informed by the respondent's solicitors that the respondent and the deceased only underwent, on 31 August 1991, a customary marriage.

It must be noted here that s. 5(4) of the 1976 Act provides that after the appointed date, i.e., 1 March 1982, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III of the Act. Section 9 which falls under Part III provides that a marriage under the Act may only be solemnised by a Registrar and s. 6 provides every marriage contracted in contravention of s. 5 shall be void.

In her affidavit, the respondent admitted that she and the deceased only underwent a customary marriage on 31 August 1991 but insisted that the marriage was valid and that she has the *locus standi* to bring the action. Counsel for the respondent, Miss Baidah Mohamed Noor, in her affidavit laid down the chronology of events with regard to the action and averred that the application was made to delay proceedings. She explained therein that:

(i) the summons and statement of claim were issued on 15 June 1994 and were served on the appellant on 1 July 1994;

(ii) solicitors for the appellant served their notice of appearance on 30 August 1994 and their statement of defence on 27 September 1994; and

(iii) it was agreed by both parties before the Court on 8 September 1995, that the appellant was 50% liable for the accident as a result of which the Court adjourned the matter to 13 November 1995 for assessment of damages;

(iv) the application to strike out was too late in the day – it was only filed on 14 May 1996.

The application to strike out was heard by the Sessions Court Judge on 20 September 1996 and on 7 November 1996 he dismissed the application and it is against this decision that the appellant has appealed.

At the outset of the hearing of this appeal, the appellants Counsel intimated that her application was only confined to O. 14 r. 21(d) of the Subordinate Court Rules, i.e., that the respondents action was an abuse of the process of the Court. She contended that in an action for claim of compensation to the family of a person for loss occasioned by his death, s. 7(2) of the Civil Law Act 1956 provides:

> Every such action shall be for the benefit of the **wife**, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased. (Emphasis mine)

She then went on to argue that since the respondent and the deceased only underwent a customary marriage on 31 August 1991, which was clearly after the appointed date of the coming into force of the 1976 Act, the marriage was void as it was not solemnised in accordance with the Act. That being so, she contended that the plaintiff has no *locus standi* to bring the action as she cannot claim to be the 'wife' of the deceased and cannot fall within the contemplation of the said s. 7(2) of the Civil Law Act. To support her contention, Counsel referred to the case of *K v. JMP Co. Ltd.* [1975] 1 All ER 1030. In that case, which relates to a claim under the Fatal Accidents Acts 1846 to 1959, the children of a father and mother brought an action, by their mother as next friend, against the defendants for damages under the Acts for the loss that they had suffered from their father's death – the father and mother started to live together in 1964 but they did not marry. The Fatal Accidents Act 1846 provides that when death is caused by negligence an action shall be maintainable – it also provides that every such action shall be brought for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased. Consequently s. 1(1) of the Fatal Accidents Act 1959 provides that the persons for whose benefit or by whom an action may be brought under the 1846 Act shall include any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased person and s. 1(2)(c) provides that an illegitimate person shall be

treated as the legitimate child of his mother and reputed father. With regard to the mother's claim for compensation, Stephenson LJ said (at p. 1037):

> She herself has lost just as much by their father's death as if she had been his widow. But she did not marry him and therefore cannot claim compensation for his death, although their illegitimate children can.

In her reply, Counsel for the respondent pointed out that the word 'wife' is not defined in the Civil Law Act. She then referred to s. 2(1) of the Married Women Act 1957, an Act relating to married women (which was enacted in 1957 as FM Ordinance No. 36 of 1957 and was revised in 1990 as Act 450 – the revised version came into force on 23 November 1990) which reads:

> In this Act:
>
> "married woman" includes any woman married in accordance with the rites and ceremonies required by her religion, manners or customs;

She then referred to s. 4 which provides for the capacity of married women – it reads:

> Subject to this Act, a married woman shall:
>
> (a) ... ;
>
> (b) ... ;
>
> (c) be capable of suing and being sued in her own name either in tort or in contract or otherwise and shall be entitled to all remedies and redress for all purposes; and
>
> (d) ...;
>
> in all respects as if she were a **feme sole**.

Counsel then contended that since the word 'wife' is not defined in the Civil Law Act, the respondent has the *locus standi*, based upon the above provisions of the Married Women Act, to bring this action in tort as she and the deceased had undergone a customary marriage. In urging that the appeal be dismissed, Counsel also pointed out that there was delay on the part of the defendant in making this application to strike out under O. 14 r. 21 of the Subordinate Courts Rules – she stressed that the application was filed after a period of about 1 year and 10 months since the summons and statement of claim were served on the appellant. On this point, she referred to the commentary on O. 18 r. 19(1) of the Rules of the High Court 1980 which is the equivalent of O. 14 r. 21 of the Subordinate Courts Rules, found at p. 226 of Vol. 1 of *Mallal's Supreme Court Practice* (2nd Edn.) which reads:

> Any attempt to challenge the authority to sue in the plaintiff's name should be made at an early stage in the suit, and not on an application to strike out under this rule. *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse* [1925] AC 112, and *Richmond v. Branson* [1914] 1 Ch 968.
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> The rule states that the order may be made "at any stage of the proceedings". Still the application should be made promptly. ... But the Court has a discretion and an application may be made even after the pleadings are closed: T*ucker v. Collinson* 34 WR 354.

After hearing the submissions of both Counsel, I dismissed the appeal and now give my reasons for doing so. According to the notice of appeal, the learned Sessions Court Judge dismissed the application on the ground that it was too premature for him to consider the matter at that stage of the proceedings and that it will be decided at the trial. With respect, what trial? Counsel for the respondent has stated in her affidavit that it has been agreed by the parties that the appellant was 50% liable for the accident and that the only thing pending was the assessment of damages by the Court. The assessment of damages was fixed for hearing on 13 November 1995 but as to what transpired on that date is not clear. Be that as it may, I would think that it would have been in order if the learned Sessions Court Judge had considered the application on its merits and decide upon it instead of dismissing the application on the ground that it was premature. Seeing that the matter was before me, and since I was of the view that sending it back to the learned Sessions Court Judge and directing him to decide on the merits of the application would only delay the proceedings further, I invited both parties to argue the appeal. To me this would be in line with s. 29 of the Courts of Judicature Act 1964 read together with s. 69(4) of the same Act which provides all civil appeals shall be by way of re-hearing and that in hearing of appeals, the Court may, *inter alia,* make any order which ought to have been given or made, and make such further or other orders as the case requires.

I would first deal with the question as to whether there was delay on the part of the appellant in making this application to strike out. Counsel for the appellant has stated that since the respondent had brought the action on the basis that she was the wife of the deceased, they had requested solicitors for the respondent to forward a copy of the marriage certificate but they have failed to do so. She was subsequently informed by Counsel for the respondent that it was a customary marriage. As to when she was informed that the marriage was a customary marriage is not clear and as such I gave the appellant the benefit of the doubt, i.e., the delay, if any should not vitiate the application. After all the Court has a discretion when considering such an application and furthermore such an application may be made even after the pleadings are closed (*Tucker v. Collinson* – referred to above).

The second and, to me, the only main question which need to be answered is whether the respondent has the *locus standi* to bring this action. I have dismissed this appeal on the ground that I am of the view that she has. As quite rightly submitted by Counsel for the respondent, the word 'wife' is not defined in the Civil Law Act. Counsel for the appellant has argued that after the date of coming into operation of the 1976 Act, a marriage contracted in contravention of the provisions of the Act shall be void. Section 9 which is found under Part III of the 1976 Act provides a marriage under the Act may be solemnised only by Registrar and s. 22(4) provides every marriage purported to be solemnised in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under sub-s. (3) has been delivered to the Registrar or Assistant Registrar as the case may be. Section 5(4) provides that after the date of coming into operation of the Act, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III. On the face of it, it would seem that the customary marriage underwent by the respondent and the deceased, as far as the 1976 Act is concerned, would be void – they had only contracted a customary marriage after the date of coming into operation of the 1976 Act and there is no evidence to show that it was solemnised pursuant to the provisions of the 1976 Act neither has the respondent furnished a copy of the certificate of marriage issued pursuant to the Act. Since the respondents marriage to the deceased would seem to be void pursuant to the provisions of the 1976 Act, does that preclude her from bringing an action under ss. 7 and 8 of the Civil Law Act? In other words, is the respondent a 'wife' within the contemplation of s. 7(2) of the Civil Law Act?

In my opinion, since the legislature has seen it fit not to define what is meant by a 'wife' in the Civil Law Act, and unless there be something in the context to the contrary, I would think that word should be read as applicable to those things to which they would in their natural sense apply. I cannot find anything in the Civil Law Act which provide that the term 'wife' as found in the said s. 7(2) should be confined to a woman who is a party to a marriage solemnised and/or registered under any prevailing Act relating to marriages and divorce. That being the case, I would think that it is for the Court to interpret that word as found in the Civil Law Act as best it may. In *Camden (Marquis) v. IRC* [1914] 1 KB 641, Cozens-Hardy, MR said (at p. 647):

> It is for the Court to interpret the statute as best it may. In so doing the Court may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries.

Dictionaries are of course not authorities but to look for the ordinary meaning of a particular word, they would of course be of valuable assistance. With regard to such sources, Lord Coleridge in *R v. Peters* [1886] 16 QBD 636 at p. 641 said:

> I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of Courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books.

What is a 'wife'? According to the *Concise Oxford Dictionary* (9th Edn.) a 'wife' is "a married woman esp. in relation to her husband" and in *Jowitt's Dictionary of English Law* (Vol. 2 - 2nd Edn.) "a woman who has a husband". What is clear is that there must be a marriage before a woman can be termed a "wife".

What is a marriage? According to the *Concise Oxford Dictionary* a 'marriage' is, *inter alia*, "1. the legal union of a man and a woman in order to live together and often to have children. 2. an act or ceremony establishing this union" and in *Jowitt's Dictionary of English Law*, it is "the voluntary union for life of one man and one woman to the exclusion of all others ..., for the purpose of living together and procreating children ...; entered into in accordance with the rules as to the consanguinity or affinity of the parties, and their capacity to enter into and perform the duties of matrimony, and in accordance with the rites or formalities required either by the law of England or the place where the marriage took place."

Section 5(3) of the 1976 Act provides:

> Every person who on the appointed date is unmarried and **who after that date** marries under any law, religion, **custom** or usage shall be incapable during the continuance of such marriage of contracting a valid marriage with any other person under any law, religion, custom or usage, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia. (Emphasis mine)

The effect of s. 5(3) above is that a person who undergo, *inter alia*, a customary marriage on or after the date the 1976 Act came into force, while that marriage is still subsisting, is incapable of contracting a subsequent marriage in Malaysia or outside Malaysia. Thus on the face of it s. 5(3) would seem to denote that there is nothing wrong if a person undergo a customary marriage after the appointed date except that s. 5(4) of the Act requires that the customary marriage should be solemnised in accordance with Part III of the Act.

Sec*tion* 24(1) which appears under Part III of the 1976 Act provides, *inter alia*, that a priest of any temple may be appointed by the Minister to solemnise any marriage in accordance with the rites and ceremonies of that religion. Consequently s. 25 provides that immediately after the solemnisation, the Registrar shall enter the prescribed particulars in the marriage register. However s. 34 provides:

> Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

The above provisions would denote that a customary marriage would be a valid marriage if it is solemnised by a priest of any temple who is duly appointed by the Minister pursuant to the provisions of the Act but its non-registration would not necessarily invalidate such a marriage. In the instant case it is not clear whether the respondent's marriage to the deceased was solemnised by such a duly appointed priest. What is clear is that the respondent has not forwarded any evidence to show that it has been registered pursuant to the provisions of the Act.

Be that as it may, the question arising is, notwithstanding that the respondent's marriage has not complied with the provisions of the 1976 Act, can this omission preclude her from bringing an action under the Civil Law Act? I do not think so. In *Craies, on Statute Law* (5th Edn.) the learned author has this to say:

> In considering what light one statute may throw upon the meaning of another statute, it is necessary to ascertain what assistance may be derived, firstly, from statutes which are *in pari materia* with the statute under consideration; and secondly from earlier statutes not precisely *in pari materia*, but in some way relating to or affecting the same subject-matter, bearing in mind "that," as was said in *Escott v. Mastin* [1842] 4 Moore PC 104, 123, "the same enactment of a statute (or the same direction in a rubric) may receive one construction when it deals for the first time with a given subject-matter, and have another meaning and construction when it deals with a matter which has already been made the subject of enactment, and that this is most specially the case where the posterior enactment deals with the matter without making any reference to the prior enactment." And thirdly, it must be seen what assistance may be derived from subsequent statutes as being what is called "parliamentary expositions" of prior statutes.
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> In the interpretation of statutes the Courts decline to consider other statutes proceeding on different lines and including different provisions, ...

In the instant case I would decline to consider the provisions of the 1976 Act which to me is a statute which proceeds on different lines and includes different provisions which deals with a different subject matter. The preamble to the 1976 Act reads:

> An Act to provide for monogamous marriages and the solemnisation and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

I am unable to see how it ought to have any influence upon the question which I have to decide, i.e., whether the respondent falls within the contemplation of the word 'wife' found in s. 7(2) of the Civil Law Act. I do not think that I should speculate on what was the intention of the legislature with regard to s. 7(2), i.e., as to whether such a term should only be restricted to a "married woman" who has undergone a marriage solemnised and registered in accordance with the prevailing Act relating to marriages. In *Salomon v. A. Salomon & Co. Ltd.* [1987] AC 22 at p. 38 Lord Watson said:

> 'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it.

What the legislature intended to be done or not to be done can only be ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. In my opinion I do not think that the word 'wife' found in s. 7(2) of the Civil Law Act should be restricted to a woman whose marriage has been solemnised and registered pursuant to the provisions of any prevailing Act relating to marriages and divorce. The Married Women Act 1957 provides that a "married woman" includes any woman who has undergone a customary marriage – to me, such a "married woman" would fall within the contemplation of the word "wife" as found in s. 7(2) of the Civil Law Act – and the Act also provides that she shall be capable of suing in tort and shall be entitled to all remedies and redress for all purposes. In the instant case it is my view that the respondent, having undergone a customary marriage with the deceased, is a 'wife' and hence has the *locus standi* to bring this action on behalf of the deceased's estate and that being so, I dismissed the appeal with costs.

Incidentally, I am of the view that the case of *K v. JMP Co. Ltd.* cited by Counsel for the appellant has no bearing upon the issue before me as in that case the parties did not marry but lived together as husband and wife.

Reported by Anne Khoo